

IV. AMENDMENTS TO THE DRAWINGS

--- Replacement and annotated mark-up drawing sheets for amended figures showing the amended figures, if any, are attached at the Appendix hereto. Each figure is in compliance with 37 C.F.R. § 1.84. An explanation of the changes, if any, is set forth below in this “Amendments to the Drawings” section. Replacement drawing sheets are identified in the top margin as “Replacement Sheet.” Any replacement drawing sheet including amended figures includes all of the figures appearing on the immediate prior version of the sheet. Any annotated drawing sheets, if the same are required by the Examiner, are identified in the top margin as “Annotated Marked-Up Drawings.” Any deleted figure is noted by an instruction to delete the figure. Any corresponding amendment to the specification necessary to be made because of an amendment to the drawings in this section is made in the corresponding “Amendments to Specification” section.

- THE DRAWINGS OF THE PATENT IS HEREBY AMENDED AS SET FORTH BELOW:
 - *No Amendment Made to the Drawings*
 - *Attachments:* None

V. REMARKS/ARGUMENTS

• STATUS OF THE CLAIMS

Claims 1 – 7 and 17 are pending in this application. Claim 1 has been amended herein. Claims 8 – 16 have been withdrawn in response to the Examiners restriction requirement. No new matter has been added to the application.

• ELECTIONS/RESTRICTIONS

In the Office Action the Examiner required restriction of claims. A provisional election with traverse was made on 5/2/07 to prosecute invention I, claims 1-7. Affirmation of this election is made herein.

• OBJECTIONS

• OBJECTIONS TO CLAIMS AND SPECIFICATION

• Examiner's Stance

The Examiner has raised no objections.

• Applicants' Response

N/A

• REJECTIONS

• REJECTION UNDER 35 U.S.C. §102(b)

• Examiner's Stance

The Examiner at paragraph 9, page 5, of the Office Action, has rejected claims 1 and 5 under 35 U.S.C. §102(b) as being anticipated U.S. Patent No. 3,355,098 to Farr.

The Examiner states that regarding claim 1, U.S. Patent No. 3,355,098 to Farr discloses a fractionator having a head surface at a forward end of the head, the head being configured to form a slideable seal with the inside surface of a sample tube (column 1, lines 61-65); a collection port disposed forward of the head surface (column 1, lines 67-70); and a fluid passageway configured and arranged to allow fluid transport from the sample tube to sample receptacles (column 2, lines 10-13 and 25-26). Furthermore regarding claim 5, the Examiner states that Farr discloses a fractionator wherein the collection port is placed off-center of the head (Figure 1, ref. no. 16).

• Applicants' Response

Applicants respectfully traverse the rejection of claims 1 and 5 under 35 U.S.C. §102(b). Applicants base their traverse on the failure of the Examiner to show each and every element of the amended claims in the references.

The amended claim 1 recites a fractionator comprising a head having a head surface at a forward end and a shaft on the back end. Support for these features can be found in the application at paragraph 00017 on page 4 and also on Fig. 1.

Applicants further assert with respect to the amended independent claim 1 that U.S. Patent No. 3,355,098 to Farr teaches the use of “A plunger tube 12 having a soft rubber piston head 13 attached to its inner end...” (line 61, column 1 of the specification) The plunger tube is hollow and it contains inside a “plastic flexible small bore or capillary tube 15...” (lines 67 - 69, column 1 of the specification). This *hollow* plunger tube is distinctly different from the shaft claimed in independent claim 1, and has a different utility, i.e., to contain the “plastic flexible small bore or capillary tube 15” inside the hollow plunger.

Because of this difference, it is asserted that amended claim 1 should be allowed, and such allowance is respectfully requested. Furthermore, since independent claim 1 is allowable, it is asserted that dependent claim 5 is also allowable.

- *Examiner's Stance*

The Examiner at paragraph 12, page 5, of the Office Action, has rejected claims 1, 2, 6 and 7 under 35 U.S.C. §102(b) as being anticipated by FR 2537092 to Pelecq.

The Examiner states that regarding claim 1, FR 2537092 to Pelecq discloses a device having a head with head surface at the forward end of the head, the head being configured to form a slideable seal with the inside surface of a sample tube, a collection port disposed forward of the head surface, and a fluid passageway in fluid communication with the collection port ("sealing stopper having a pouring spout for the distribution on demand of liquid held in a necked container and propelled out of the container by the intermediary of a gas ... incorporated in the interior of the container, this stopper being characterized by the fact that it has a body integral with a plunger tube," page 3, lines 6-11 of translation). Furthermore, the Examiner states that regarding claim 2, Pelecq discloses a head surface positioned inside the sample tube and a plenum space bounded by the head surface, the collection port, and the inner surface of the tube ("sealing stopper having a pouring spout for the distribution on demand of liquid held in a necked container and propelled out of the container by the intermediary of a gas ... incorporated in the interior of the container, this stopper being characterized by the fact that it has a body integral with a plunger tube," page 3, lines 6-11 of translation). Regarding claim 6, the Examiner states that Pelecq discloses a collection port placed at the center of the head (see Figure 2), and regarding claim 7, Pefecq discloses a collection port configured to isolate the head surface from a sample during collection of the sample from the sample tube (see Figure 3).

- *Applicants' Response*

Applicants respectfully traverse the rejection of claims 1, 2, 6 and 7 under 35 U.S.C. §102(b). Applicants base their traverse in part on the failure of the Examiner to show each and every element of the claims as presently amended.

The amended claim 1 recites a fractionator comprising a head having a head surface at a forward end and a shaft on the back end. Support for these features can be found in the application at paragraph 00017 on page 4 and also on Fig. 1.

In the first instance applicants assert that FR 2537092 to Pelecq teaches a removable sealing stopper for a container and not a fractionator. Furthermore, FR 2537092 to Pelecq does

not teach a head having a head surface at a forward end of the head and a shaft on the back end. The reference discloses a stopper (ref. no. 6) connected to a hollow plunger tube (ref no. 10) on its head surface. On its opposite surface the stopper is connected to a mobile valve (ref. no. 7). This entirely different arrangement does not remotely suggest the present invention.

Because of these distinct differences, it is asserted that amended claim 1 should be allowed, and such allowance is respectfully requested. Furthermore, since independent claim 1 is allowable, it is asserted that dependent claim 2, 6, and 7 are also allowable.

- REJECTIONS UNDER 35 U.S.C. §103(a)

- Examiner's Stance

The Examiner at paragraph 20 on page 7 of the Office Action has rejected claim 3 and 4 under 35 U.S.C. §103(a) as being unpatentable over FR 2537092 to Pelecq. The Examiner states that regarding claim 3, Pelecq does not disclose the ratio of the cross-sections but does disclose varying dimensions and diameters of the collection port and collection tube. The Examiner further states that regarding claim 4, Pelecq discloses varying dimensions and diameters of the collection port and collection tube.

- Applicants' Response

It is asserted that for the reasons stated above, independent claim 1 as amended is in condition for allowance. Furthermore, since independent claim 1 is allowable, it is asserted that dependent claim 3 and 4 are also allowable.

CONCLUSION TO REMARKS

Applicants assert that this response is fully responsive to the Examiner's Non-final Office Action dated May 14, 2007. Applicants respectfully seek early allowance of the pending claims.

Date: November 14, 2007

Respectfully Submitted,



Hans-Peter G. Hoffmann
Reg. No. 37,352
Agent for Applicant
Kelley Drye & Warren LLP
Intellectual Property Department
400 Atlantic Street
Stamford, CT 06901-3229

Direct Tel.: 203-351-8011
Facsimile: 203-327-2669
e-mail: hoffmann@kellydrye.com

VI. APPENDIX

- *No appendix is intended to be attached*